IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
WRIT PETITION NO. 2961 OF 2004

G.K. Jadhav ... Petitioner

Vs.

M/s. Air India Ltd. & anr. Respondents

Mr. Ashok D. Shetty with Mr. Tanmesh Shetty & Ms. Rita Joshi for Petitioner.

Mr. S.K. Talsania with Mr. J. Saluja i/by M.V. Kini & Co. for Respondent No. 1.

CORAM : F.I. REBELLO,J.
DATED : NOVEMBER 03, 2004

P.C.

. The Petitioner challenges the Award dated 16.1.2004 which has rejected the reference made by the appropriate Government. Reference was whether the action of the Respondent Management in dismissing the petitioner with effect from 7.12.1995 is legal and justified. The Petitioner was absent during the period 13.9.1993 till 30.8.1994. The chargesheet was served upon him on 10.3.1994. He has on occasions participated and other time was absent. He admitted the charge as levelled against him. The enquiry officer based on the material available submitted his report after complying with formalities to the Respondent Management. Based on the report by the Enquiry Officer, dismissed the petitioner from service. The Petitioner did examine himself before the Industrial Court. In cross examination, it was specifically put to him that the certificate

produced by Dr. Kumavat which is at Page 21 was false. That certificate was issued on 30.8.1994. The certificate issued by Mental Hospital Thane sets out that he was suffering from Adjustment Disorder & depression and was under their treatment from 13.9.1993 till 30.8.1994.

. At the hearing of this petition on behalf of the Petitioner, their learned counsel contends that the petitioner had been declared fit to resume duties by the Medical Officer of the Respondent and certificate to that effect was issued on 6.10.1994. It is pointed out that the petitioner had applied for leave for the period that he was absent. It is set out that considering the nature of the illness and as in the past there is nothing against the petitioner, the punishment of dismissal is disproportionate to the charge alleged and proved. It is also pointed out that he has put in 17 years of service. It is also pointed out that the Management is seeking to rely on the past record by placing reliance on C.R.s which were not put to him nor explanation call and as such that could not have been considered. For all the aforesaid reasons, it is submitted that the impugned award is liable to be set aside and or modified.

. On the other hand on behalf of the Respondents, it is pointed out that the Respondents had disputed genuineness of the certificate issued by Dr.

Kumavat. Dr. has not been examined. There is no other material to show that during the period of 30.9.1993 to 30.8.1994 the petitioner was suffering from mental illness which either disabled him from joining the duty or applying the respondents for leave. The Medical certificate of fitness issued by Doctor of the Respondent could be of no assistance in so far as illness is claimed by respondent herein.

. From the evidence on record the case of the Petitioner appears to be that after he left the office on 30.9.193, he was mentally depressed and sick and lost his mental balance. On the road he met his friend who took him to his house. That friend took him to Dr. Kumavant. He stayed with him. For some days his friend had gone to his place at Vidarbha. Apart from the fact that the Petition discloses no error apparent on the face of the record, the entire case of the Petitioner is totally devoid of merit. The friend who had taken him and who had kept him in his house without informing his wife or employer has not been examined. In other words, the crucial evidence, which the petitioner had to lead either before the Enquiry Officer or before the tribunal for the tribunal to interfere if the punishment was disproportionate was not led before the tribunal. Considering the above, to my mind the order of the tribunal does not suffer fro any error apparent on

the face of the record. These are purely findings of fact based on the record and calls for no interference by this court in the exercise of its extra ordinary jurisdiction. Hence, Petition rejected.

(F.I. REBELLO,J.)